

Farewell to the European Constitutional Tradition

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First [proposed](#) by Russian president Vladimir Putin during his annual address to the Federal Assembly in January, the 2020 Russian Constitutional Amendments were initially planned to enter into force only three months later upon approval in an 'all-Russian vote'. Scheduled for 22 April 2020 – Lenin's 150th birthday – the vote had to be postponed due to the spread of the coronavirus. On 1 July 2020, with Russia's coronavirus cases passing 650,000 and following an [elaborate spectacle of public affirmation](#), the Russian electorate eventually confirmed the amendments. Although many of these amendments have to be considered mainly symbolic, they constitute the most fundamental changes of Russia's Constitution in its 26-year history. Moreover, all amendments taken together, in combination with the peculiar drafting process and entering into force, arguably undermine the democratic legitimacy of the Russian Constitution to a degree that they can be interpreted as a farewell to the European constitutional tradition.

Drafting Process and Entering into Force

Evidently to avoid the elaborate and burdensome procedure foreseen for amendments to chapters 1, 2 and 9 in article 135 of the Russian Constitution (RC), all changes regard chapters 3 to 8 only. The procedure for amendments to these sections is laid down in articles 136 and 108(2) RC and is further detailed in a [federal law](#). In line with this procedure, Putin submitted a first draft law to the State Duma which unanimously adopted it following the consideration of proposals by a 'working group' set up by the Russian president, who had stated in that context that [the group's task 'requires the highest legal and judicial skills'](#). However, only a fraction of the working group's members turned out to have a legal background, while the broad majority [consisted of an illustrious group of Kremlin-loyal figures](#). The final version of the draft law was then forwarded to the Federation Council, which in turn swiftly approved the amendments, and within record speed of only two days all regional legislative authorities of the 85 constituent entities of Russia had followed with their approval. On 14 March 2020, Putin signed [Constitutional Amendments Law No. 1-FKZ](#).

Generally, laws amending the Russian Constitution come into force following their signing by the Russian president on the day of their publication. Law No. 1-FKZ deviated from that standard by additionally requiring the confirmation of the law's [constitutionality by the Russian Constitutional Court](#) as well as an 'all-Russian vote'. Especially the latter was problematic (to say the least) since the rules established for that vote appeared as an intentional bypassing of [existing rules on referendums](#).

Enforcement of Decisions by International Bodies

A major justification for amending the Russian Constitution was the strengthening of Russia's sovereignty. Consequently, a sentence has now been added to article 79 RC, stating that decisions by international bodies adopted on the interpretation of provisions of international treaties to which Russia is a party shall not be enforced in Russia if they are contrary to the constitution.

The amendment has to be considered largely symbolic since this was already the legal situation prior to the constitutional changes: in 2015, the [Russian Constitutional Court had concluded](#) that if a judgement of the European Court of Human Rights (ECtHR) contradicts the Russian Constitution, then Russia has the right not to implement measures foreseen in the judgement if this is the only possible means to avoid violating the constitution. Subsequently, the Russian parliament made respective amendments to the Law on the Russian Constitutional Court, [thereby turning the judgement into positive law](#). In response, the [Venice Commission concluded](#) that declarations of unenforceability of judgements by the ECtHR based on the amended Law of the Russian Constitutional Court violate the European Convention on Human Rights and are at variance with the Vienna Convention on the Law of Treaties. The commission recently confirmed this assessment in the context of the amendment to article 79 RC and [considered that it should be removed](#).

Limiting Political Rights of Individuals Holding Foreign Citizenship

A further largely symbolic change concerns the [problematic](#) prohibition for an extensive range of public officials to hold foreign citizenship or a residence permit or any other document allowing to reside permanently in the territory of another state. Apart from the required duration of permanent residency for the Russian president which was raised from 10 to 25 years – [possibly aimed at Russia's main opposition leader Alexei Navalny](#) – and the requirement that he or she must never (as opposed to: at the time of candidature) have had foreign citizenship this was however already the case prior to the adoption of the amendments, even if not prescribed on constitutional level: since 2006, both the Law on Basic Guarantees of Electoral Rights and the Law on the Election of the Russian President include a provision with the exact same wording, which the [Russian Constitutional Court confirmed](#) to be in accordance with the constitution and international law due to possible conflicts of interest arising from the special 'political-legal relation of citizens' to their states.

Amendments with Ideological Elements

A whole [range of further amendments has ideological elements](#). To give only one example: supplemented article 67¹ RC now provides that Russia ensures the 'protection of historical truth'. The amendment has to be seen against the background of the ['memory wars' increasingly fought by Russia](#) in connection

with anniversaries of historical events, most recently the 80th anniversary of the signing of the Molotov-Ribbentrop Pact in August 2019, and the 75th anniversary of the liberation of the Auschwitz concentration camp in January 2020. In recent years, Russia has established a whole set of alternative official narratives concerning its Soviet past, often fundamentally deviating from well-established 'Western' interpretations. To doubt these official Russian interpretations is not only disfavoured, but [increasingly criminalised](#). The constitutional amendment to protect a particular (and often very controversial) official reading of historical events therefore appears to be the next logical step in a [broader trend of politicised memory legislation](#).

Number of Presidential Terms

By far the most controversial substantial amendment concerns the number of presidential terms. Previously, article 81(3) RC stated that '[o]ne and the same person' cannot hold the president's office 'for more than two consecutive terms'. Putin's first proposed draft law only removed the word 'consecutive', giving rise to speculations of how he might plan to stay in power after 2024 (when his second cycle of two consecutive terms will end). In the second reading of the draft law however, Valentina Tereshkova, deputy of the State Duma and former cosmonaut famous for being the first woman in space, [suggested](#) an amendment providing that 'the incumbent president, just like any other citizen, has the right to run for president after the amended constitution takes effect'. Following this astonishing suggestion, Putin stated his support for Tereshkova's proposal, [spiking rumours that it was choreographed](#). In his speech, [Putin argued](#) that more than two presidential terms may be justified for reasons of stability, comparing Russia's current situation – notably *before* the outbreak of the coronavirus pandemic – to that of the United States during the Great Depression and World War II (when Franklin D. Roosevelt served as America's president for four consecutive terms).

Constitutional provisions allowing for more than one re-election in presidential systems entail 'risks for the balance of powers and even for democracy as such', as the [Venice Commission has put it](#): unlimited mandates in countries that have no democratic tradition and that do not have a developed civil society 'create the danger of having a "republican monarch", in which a 'Head of state could introduce a new "Caesar" or a new "Bonaparte", regardless of the model of government'.

Elevation of the State Council to a Constitutional Body

Initially, i.e. prior to the proposal to 'reset to zero' Putin's previous presidential terms, the biggest surprise among the proposed amendments was the announcement that the status of the State Council was planned to be changed from a consultative to a constitutional body, revitalising speculations that Putin might plan to continue to chair it after his fourth term as president will have ended in 2024. [Something similar had occurred in Kazakhstan in 2018](#), where long-term president Nursultan

Nazarbaev stepped down only to become chairman for life of the Kazakh Security Council after a corresponding law had been adopted that upgraded the council from an advisory to a constitutional body. Ever since, policy analysts discussed the prospect of a [‘Kazakh retirement’ for Putin](#). Although it remains to be seen what the role of the State Council in the broader constitutional architecture will look like, its mere elevation to a constitutional body in chapter 3 instead of chapter 1 [arguably contradicts article 11 RC](#) enumerating the bodies that exercise state power.

Changes with Regard to the Judiciary

While Western commentators – apart from [one notable](#) exception – have so far paid relatively little attention to the amendments regarding the Russian judiciary, they were [widely discussed among Russian constitutional lawyers](#). Changes regard in particular the independence of the judiciary. According to amended article 83(e) RC, the Russian president now ‘submits’ the candidates that should be appointed judge at the highest Russian courts. According to supplemented article 83(e³) RC, the same goes for the dismissal of these judges, if they ‘commit an act defaming honour and dignity’ of the judiciary or in any other case enumerated by federal constitutional law indicating the judge’s inability to exercise his or her powers. What precise role the Russian president now assumes is unclear, but the involvement as such is problematic. For example, the [European Charter on the Statute for Judges envisages](#) for the termination of the office of judges the ‘intervention of an authority independent of the executive and legislative powers’, and with respect to different appointment systems for judges the [Venice Commission found](#) that the participation of presidents is only unproblematic as long as he or she is bound by a proposal made by an independent judicial council.

A Textbook Example of ‘Abusive Constitutionalism’

In a recent article published right before the Russian president’s announcement of his amendment plans, [William Partlett and Mikhail Krasnov argued](#) that the presidential centralism of the Russian Constitution has hindered the transformative potential of the other parts of the constitution, and that ‘[a]ny future turn to transformative constitutionalism in Russia will require weakening the power of the Russian presidency’. The exact opposite now happened, giving Putin the possibility to stay in power until 2036 which would make him the longest-serving Russian leader since Peter the Great, surpassing Stalin’s reign of 31 years. With this extreme extension of term limits, exacerbated by the added dependency of the judiciary of the highest courts on the president, the amendments may be considered a textbook example of ‘abusive constitutionalism’, i.e., [in the words of David Landau and Rosalind Dixon](#), ‘constitutional processes [that] are used to promote distinctly antidemocratic ends or to advance the cause of would-be autocrats by removing democratic checks and balances on the exercise of political power’.

The democratic legitimacy of these changes is further undermined by the amendments process. The mere speed of only two months from the first announcement to propose changes to the constitution to the signing of Law No. 1-

FKZ indicates that a proper democratic discourse did not take place. In particular, the 'working group' turned out to be a group of Kremlin-loyal figures that developed no critical views on almost any of the suggested proposals by the Russian president. Even worse: the last-minute proposal by Valentina Tereshkova to 'reset to zero' Putin's presidential terms – the single most important proposed change to the constitution – arguably made the entire process appear like a farce. Lastly, the many symbolic amendments can arguably be interpreted as an attempt to codify a nationalist idea of Russia and a glorious Soviet past, supported by an insistence on Russia's 'absolute' sovereignty and independence from the West, in particular in human rights issues.

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